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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

LELAND T. FAEGRE, an individual  
THERESA FAEGRE, an individual,  
LELAND T. FAEGRE and THERESA  
FAEGRE, as TRUSTEES OF THE  
MILKY WAY INCORPORATED AND  
401(K) PROFIT SHARING PLAN,

Plaintiffs,

vs.

CINDY ARMENTROUT, ESQ.,  
individually and as Member of  
ARMENTROUT & ASSOCIATES, LTD.,  
a Nevada professional LLC, SHERRY  
GALLATIN, TOM GALLATIN,  
individually and as members of CASEY  
HOLDINGS I, LLC., Nevada domestic  
limited-liability company CASEY  
HOLDINGS I, LLC SERIES K., a Delaware  
limited liability company, and DOES 1 to  
50,

Defendants.

**CASE NO.:**

**COMPLAINT FOR RECISSION,  
DAMAGES, AND EQUITABLE RELIEF**

- 1. Breach of Contract  
(Armentrout Defendants)**
- 2. Breach of Contract  
(Gallatin Defendants)**
- 3. Breach of Fiduciary Duty  
(Armentrout Defendants)**
- 4. Breach of Fiduciary Duty  
(Gallatin Defendants)**
- 5. Breach of the Covenant of Good  
Faith and Fair Dealing**
- 6. Civil Conspiracy**
- 7. RICO Act**
- 8. RICO Act (Nevada RICO)**
- 9. Intentional Misrepresentation**
- 10. Negligent Misrepresentation**
- 11. Intentional Interference with  
Prospective Economic Advantage**
- 12. Negligent Interference with  
Prospective Economic Advantage**

**DEMAND FOR JURY TRIAL**

COMES NOW Leland T. Faegre, an individual, Theresa Faegre, an individual, and Leland T. Faegre and Theresa Faegre, as trustees of the ERISA Trust for the Milky Way Incorporated and 401(K) Profit Sharing Plan, (collectively "PLAINTIFFS,") in the above captioned case, by and through their attorney of record Charles R. Kozak, Esq., of Kozak & Associates, LLC., who allege, upon information and belief, as follows:

### **JURISDICTION**

1. The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between Citizens of different states. [28 U.S. Code Section § 1332].

2. Title 18 U.S.C. Section 1965(b) confers jurisdiction upon the district courts under the Racketeer Influenced and Corrupt Organizations Act ("RICO").

3. This Court also has jurisdiction over the subject matter of these claims pursuant to 28 U.S.C. § 1331. In connection with the acts and omissions alleged in this complaint, DEFENDANTS, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, and interstate telephone communications.

4. Title 29 U.S.C. Section 1132(a)(3) and (e)(1) in relevant parts confers exclusive jurisdiction upon the district courts, with exceptions not herein relevant, and allows a fiduciary to bring an action therein (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan.

5. This Court also has supplemental jurisdiction under 28 U.S.C. §1367(a) over all other claims that are so related to claims in the action.



1           14. Defendant SHERRY GALLATIN (“S. GALLATIN”) is a resident of Nevada,  
2 residing in Zephyr Cove, Douglas County, Nevada, at all times relevant.

3           15. Defendant TOM GALLATIN (“T. GALLATIN”) is a resident of Nevada, residing  
4 in Zephyr Cove, Douglas County, Nevada, at all times relevant.  
5

6           16. Defendant CASEY HOLDINGS I, LLC (“CASEYS”) is a Nevada domestic  
7 limited-liability company, was created on August 22, 2010, has T. GALLATIN and S.  
8 GALLATIN as the managing partners, and has ARMENTROUT LTD listed as its Commercial  
9 Registered Agent.  
10

11           17. Defendant CASEY HOLDINGS I, LLC SERIES K (“CASEYS SERIES K”) is an  
12 entity of unknown status, is not registered to do business in Nevada, and is wrongfully in  
13 possession of the premises currently called Casey’s and previously called the Coyote Grill.

14           18. S. GALLATIN, T. GALLATIN, and their entities, CASEYS and CASEYS  
15 SERIES K will be collectively as “GALLATINS.”  
16

17           19. Upon information and belief, and therefore it is alleged that, DEFENDANTS, and  
18 each of them, without limiting the others, were and are the agents, servants, representatives,  
19 employees and/or co-conspirators of each of the other DEFENDANTS herein and were at all times  
20 acting within the course and scope of such agency, representation, employees and/or co-  
21 conspirators and with the permission and consent of each of said DEFENDANTS.  
22

23           20. PLAINTIFFS are informed and believe, and upon such information and belief  
24 allege, that DEFENDANTS, and each of them, were, at all times herein mentioned, acting in  
25 concert with each and every one of the remaining DEFENDANTS.  
26  
27  
28

1           21.       Wherever appearing in this complaint, each and every reference to DEFENDANTS  
2 and to any of them is intended to be and shall be a reference to all DEFENDANTS hereto, and to  
3 each of them, unless said reference is otherwise specifically qualified.  
4

5           22.       Plaintiffs do not know the true names, capacities, or basis for liability of  
6 Defendants sued herein as Does 1 through 50, inclusive, as each fictitiously named Defendant is in  
7 some manner liable to Plaintiffs, or claims some right, title, or interest in the Property. Plaintiffs  
8 will amend this Complaint to allege their true names and capacities when ascertained through  
9 discovery. Plaintiffs are informed and believe, and therefore allege that at all relevant times  
10 mentioned in this Complaint, each of the fictitiously named Defendants are responsible in some  
11 manner for the injuries and damages to Plaintiffs so alleged and that such injuries and damages  
12 were proximately caused by such Defendants, and each of them.  
13

14           23.       Unless otherwise specifically plead, all statements are plead upon information and  
15 belief.  
16

17                               **VENUE**

18           24. Venue is proper because:

- 19           a.    ARMENTROUT is a resident of and regularly transacts business in this judicial district;  
20           b.    ARMENTROUT LTD regularly transacts business in this judicial district;  
21           c.    S. GALLATIN and T. GALLATIN are residents of this judicial district;  
22           d.    CASEYS and CASEYS SERIES K regularly transact business in this judicial district;  
23           e.    ROIC regularly transacts business in this judicial district; and  
24           f.    ROIC ZEPHYR regularly transacts business in this judicial district.  
25

26           ///  
27

28           ///  
29

**FACTUAL ALLEGATIONS**

25. PLAINTIFFS purchased a Restaurant, the COYOTE GRILL (the “Grill” or “Restaurant”) from an individual named Mike Leeper (Mike Leeper is otherwise not involved in the current action).

26. The Restaurant is located in a shopping center managed and owned by ROIC ZEPHYR in Zephyr Cove, Douglas County, Nevada.

27. PLAINTIFFS determined that the RESTAURANT’s future plans best required additional funds for expansion, to include a space for entertainment.

28. T. GALLATIN thereafter became a customer of the RESTAURANT and repeatedly expressed his interest in making PLAINTIFFS’ long-term plans for the RESTAURANT succeed.

29. Due to the economic downturn, traditional funding sources, while preferable, were essentially nonexistent to PLAINTIFFS.

30. On that basis, PLAINTIFFS entered in to a verbal agreement to borrow capital from GALLATINS and/or their wholly owned entities for the benefit of the RESTAURANT, owned by the PLAINTIFFS, by improvement and expansions.

31. At the time of the financial agreements between PLAINTIFFS, the GALLATINS and their respective entities were represented by a Reno attorney, Defendant ARMENTROUT.

32. T. GALLATIN suggested to PLAINTIFFS that attorney ARMENTROUT also handle the financial transactions between the GALLATINS, PLAINTIFFS, and their respective entities.

1           33.       ARMENTROUT also presented PLAINTIFFS in the creation of business entities,  
2 including a radio station, designed to market the RESTAURANT, On Top of a Cloud, LLC, which  
3 was created to own KTHO.

4  
5           34.       ARMENTROUT breached her ethical duties to PLAINTIFFS by assisting  
6 GALLATIN in the negotiation of a \$160,000.00 loan against PLAINTIFFS.

7           35.       ARMENTROUT breached her ethical duties to PLAINTIFFS by drafting NOTE  
8 AND SECURITY AGREEMENT in favor of GALLATIN and thereafter monitored and oversaw  
9 the repayment of said loan.

10  
11           36.       Said loan by GALLATIN to PLAINTIFFS was a financial arrangement only, no  
12 business partnership or ownership interest was included in GALLATINS' agreement to provide  
13 funding to PLAINTIFFS.

14           37.       ARMENTROUT never advised PLAINTIFFS of any potential or actual conflicts  
15 of interest, nor did ARMENTROUT seek any written waiver of such.

16  
17           38.       Thereafter, ARMENTROUT further represented PLAINTIFFS in the creation of  
18 additional business entities, such as a radio station, designed to market the RESTAURANT.

19           39.       In early 2014, PLAINTIFFS became concerned that statements from ROIC  
20 contained double billing, erroneous Common Area Maintenance ("CAM") and late charges.

21  
22           40.       Additionally, PLAINTIFFS attempted unsuccessfully to work with ROIC to  
23 relocate a bus stop in front of the Restaurant that was interfering with outdoor dining.

24           41.       PLAINTIFFS contacted ARMENTROUT to review and scrutinize the ROIC  
25 invoices on PLAINTIFFS behalf and additionally to work out a solution to the bus stop location.

26           42.       Due to tensions on these issues, in spring of 2014, PLAINTIFFS began the process  
27 of considering alternate locations to move the RESTAURANT.  
28

1           43.       Alternate locations considered were closer to the casino corridor and tourist traffic  
2 in Stateline, Nevada.

3           44.       PLAINTIFFS mentioned to GALLATIN their intention to move the  
4 RESTAURANT due to the opposition by ROIC, and additionally to be in a more desirable and  
5 profitable location.  
6

7           45.       GALLATIN adamantly opposed PLAINTIFFS plan to move the RESTAURANT.

8           46.       GALLATIN'S opposition and resistance to loan PLAINTIFFS any further agreed-  
9 upon funds, if they proceeded with the move, prevented PLAINTIFFS from moving the  
10 RESTAURANT.  
11

12           47.       By GALLATIN'S opposition and resistance to loan PLAINTIFFS, GALLATIN  
13 breached his agreement to loan PLAINTIFFS under the NOTE AND SECURITY AGREEMENT,  
14 dated July 9, 2012.  
15

16           48.       Tensions between ROIC and PLAINTIFFS significantly increased when  
17 ARMENTROUT's review of ROIC's billing, revealed that the PLAINTIFFS had significantly  
18 overpaid ROIC.

19           49.       GALLATIN misrepresented to PLAINTIFFS that he would work to renegotiate the  
20 lease with ROIC on their behalf and insisted on them staying in the location, despite the  
21 opposition and over billing by ROIC.  
22

23           50.       To compensate for the overbilling, on a few occasions PLAINTIFFS paid rent to  
24 RIOC inconsistently.

25           51.       Eventually in 2014, ROIC served an eviction notice on the GRILL.

26           52.       PLAINTIFFS retained Justin Townsend, Esq. ("TOWNSEND"), of Allison  
27 Mackenzie to co-represent them together with Defendant C. ARMENTROUT to argue against the  
28



1 eviction at the summary eviction hearing in Minden District Court, where it was agreed that a  
2 settlement conference would take place in January 2015.

3         53. In addition to Attorney TOWNSEND and L. FAEGRE, ARMENTROUT and T.  
4 GALLATIN were also present at the Settlement Conference.

5         54. ARMENTROUT further breached her ethical duties to PLAINTIFFS by taking an  
6 adversarial position against the PLAINTIFFS by negotiating with ROIC at the SETTLEMENT  
7 CONFERENCE and assisting GALLATINS in a plan for GALLATIN to travel to negotiate the  
8 PLAINTIFFS' lease with ROIC.  
9  
10

11         55. At the SETTLEMENT CONFERENCE it was, or had been previously, settled  
12 between ARMENTROUT and GALLATIN that:

- 13                 a. a new lease would be negotiated on behalf of GALLATIN with ROIC;  
14                 b. GALLATIN would negotiate on behalf of himself;  
15                 c. Attorney TOWNSEND would be asked to prepare a LIMITED POWER OF  
16 ATTORNEY ("POWER OF ATTORNEY") so as to empower GALLATIN to negotiate on behalf  
17 of the PLAINTIFFS with ROIC.  
18                 d. Unknown to Attorney TOWNSEND and PLAINTIFFS, the idea of the  
19 POWER OF ATTORNEY was a ruse to enable GALLATIN to enable the takeover of the GRILL  
20 by GALLATIN, as further discussed, below.

21         56. Accordingly, GALLATIN failed to renegotiate the lease on behalf of  
22 PLAINTIFFS, but instead worked out a negotiation by which GALLATIN could take over the  
23 lease with ROIC, because he intended to take over the RESTAURANT.

24         57. On February 19, 2015, GALLATIN, ARMENTROUT, and an accountant showed  
25 up at the RESTAURANT and demanded an impromptu meeting with PLAINTIFFS.  
26  
27  
28

1           58.       PLAINTIFFS meet with GALLATIN, ARMENTROUT and the accountant in the  
2 back area of the RESTAURANT where GALLATIN threatened that they would be evicted by  
3 ROIC by the end of the month.

4  
5           59.       GALLATIN and ARMENTROUT represented to PLAINTIFFS since GALLATIN  
6 would provide no further funds under their agreement, they had no choice but to immediately sign  
7 over the RESTAURANT to GALLATIN or face eviction.

8           60.       ARMENTROUT presented an Offer to Purchase that she had prepared on behalf of  
9 and in support of GALLATIN taking the restaurant from PLAINTIFFS.

10  
11           61.       The Offer to Purchase the RESTAURANT was under market value and in the  
12 approximate amount that PLAINTIFFS owed to GALLATIN.

13           62.       Faced with the withdraw of their agreed upon funding, and with representation by  
14 ARMENTROUT and the accountant that they had no choice, PLAINTIFFS signed over the  
15 RESTAURANT to GALLATIN.

16  
17           63.       ARMENTROUT, herself, notarized the Offer to Purchase.

18           64.       In this way, GALLATINS then sought to and did wrest control of the  
19 RESTAURANT from PLAINTIFFS, all with the aid of Attorney ARMENTROUT, in breach of  
20 fiduciary duty and contractual promises, at best, and through criminal conspiracies at worst.

21  
22           65.       Today, the GALLATINS continues to operate the RESTAURANT, but have  
23 changed the name to "CASEYS."

24                               **FIRST CAUSE OF ACTION**

25                               **BREACH OF CONTRACT**  
26                               **(Allegations specific to ARMENTROUT)**

27           66.       PLAINTIFFS incorporate by this reference all prior the above paragraphs  
28 numbered 1 through 65 inclusive, as though fully set forth herein.

1           67.       PLAINTIFFS and ARMENTROUT were parties to a contract for professional  
2 services.

3           68.       The terms of the contract consisted, among other things, to advise PLAINTIFFS  
4 ethically, to represent PLAINTIFFS ethically as an attorney pursuant to the Nevada Rules of  
5 Professional Conduct (“NRPC”).  
6

7           69.       The NRCP provides that an attorney may not concurrently represent two or more  
8 clients:

9                   a.       A concurrent conflict of interest. NRPC §§ 1.7(a)(1) and 1.8.  
10

11                   b.       A significant risk that representation will be materially limited by the  
12 lawyer’s responsibilities to another client or former client or third person or the personal interest  
of the lawyer (“potential conflict”). NRPC § 1.7(a)(2).

13                   c.       Certain conflicts can be waived by a client if the client gives informed  
14 consent confirmed in writing. NRPC § 1.7(b).

15           69.       NRPC 1.7(a)(1) further provides that: A lawyer shall not represent a client if the  
16 representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if  
17 the representation of one client will be directly averse to another client.

18           70.       Not only did such action violate NRPC 1.7(a)(1), but it also violated NRCP 1.8(b),  
19 which provides as follows: a lawyer shall not use information relating to representation of a client  
20 to the disadvantage of the client unless the client gives informed consent.  
21

22           71.       ARMENTROUT represented GALLATIN and their business entities and  
23 PLAINTIFFS and their business entities regarding the RESTAURANT.

24           72.       ARMENTROUT represented PLAINTIFFS in the creation of business entities,  
25 including a radio station, designed to market the RESTAURANT, On Top of a Cloud, LLC, which  
26 was created to own KTHO.  
27

28           73.       ARMENTROUT breached her contract to provide ethical professional

1 representation to PLAINTIFFS by assisting GALLATIN in the negotiation of a \$160,000.00 loan  
2 to PLAINTIFFS without any of the required ethical advice of conflict of interests.

3 74. ARMENTROUT further breached her ethical duties to PLAINTIFFS by taking an  
4 adversarial position against the PLAINTIFFS by assisting GALLATIN in the drafting a  
5 promissory note memorializing the loan, after the fact, the “NOTE AND SECURITY  
6 AGREEMENT”, dated July 9, 2012, (“NOTE”) which documented the \$160,000.00 Loan without  
7 any of the required ethical advice of conflict of interests.  
8

9 75. ARMENTROUT further breached her contract to provide ethical professional  
10 duties by taking an adversarial position against the PLAINTIFFS by assisting GALLATIN by  
11 participating in the accounting on the NOTE on behalf of GALLATIN without any of the required  
12 ethical advice of conflict of interests.  
13

14 76. ARMENTROUT further breached her ethical duties to PLAINTIFFS by taking an  
15 adversarial position against the PLAINTIFFS by negotiating with PLAINTIFFS and GALLATIN  
16 in the future course of the GRILL with the unstated intent to aid GALLATIN in taking the GRILL  
17 away from the PLAINTIFFS, thus violating each of NRPC 1.7(a)(1), NRPC 1.8(b), NRPC  
18 1.9(a), and NRPC 1.9(c).  
19

20 77. Due to the breaches of contract by ARMENTROUT, and each of them,  
21 PLAINTIFFS, and each of them, suffered economic losses and damages.  
22

23 78. As a direct result of ARMENTROUT breach and breaches of PLAINTIFFS,  
24 and each of them, suffered foreseeable immediate and consequential damages in such amounts  
25 as are fair and reasonable, plus costs and such further relief as the court deems just and proper.

26 79. WHEREFORE, PLAINTIFFS demand judgment against ARMENTROUT for  
27 money damages in such amounts as are fair and reasonable for breach of contract, plus costs and  
28

1 such further relief as the court deems just and proper.

2 **SECOND CAUSE OF ACTION**

3 **BREACH OF CONTRACT**  
4 **(Allegations specific to GALLATIN)**

5 80. PLAINTIFFS incorporate by this reference all prior the above paragraphs  
6 numbered 1 through 79 inclusive, as though fully set forth herein.  
7

8 81. PLAINTIFFS and GALLATIN entered into the NOTE AND SECURITY  
9 AGREEMENT, dated July 9, 2012 which constitutes a written contract.

10 82. PLAINTIFFS have fully performed under the Contract all acts required of  
11 PLAINTIFFS as of the date of this filing.

12 83. GALLATIN unjustifiably failed to perform and has thereby breached the contract.

13 84. GALLATIN'S opposition and resistance to loan PLAINTIFFS any further agreed-  
14 upon funds if they proceeded with the move, prevented PLAINTIFFS from moving the  
15 RESTAURANT.

16 85. By GALLATIN'S opposition and resistance to loan PLAINTIFFS, GALLATIN  
17 breached his agreement to loan PLAINTIFFS under the NOTE AND SECURITY AGREEMENT,  
18 dated July 9, 2012.  
19

20 86. GALLATIN has refused to allow PLAINTIFFS to materially participate in the  
21 Business and has diverted the income of the Business to a secret account of DEFENDANTS and  
22 has taken assets of the Business from PLAINTIFFS.

23 87. As a direct result of ARMENTROUT breach and breaches of PLAINTIFFS  
24 and each of them, suffered foreseeable immediate and consequential damages in such amounts  
25 as are fair and reasonable, plus costs and such further relief as the court deems just and proper.  
26

27 88. As a proximate result of the actions of GALLATIN, PLAINTIFFS have been  
28 damaged in an amount to be proven at time of trial, which sum is in excess of the jurisdictional  
amount of this Court.

**THIRD CAUSE OF ACTION**

**BREACH OF FIDUCIARY DUTY  
(Allegations specific to ARMENTROUT)**

89. PLAINTIFFS incorporate by this reference all prior the above paragraphs numbered 1 through 88 inclusive, as though fully set forth herein.

90. As legal counsel for PLAINTIFFS, and each of them, ARMENTROUT, and each of them, owed to PLAINTIFFS duties of loyalty and were prohibited from placing the interests of ARMENTROUT ahead of the interests of PLAINTIFFS, or any of them.

91. As legal counsel for PLAINTIFFS, and each of them, ARMENTROUT, and each of them, owed to PLAINTIFFS duties of loyalty and were prohibited from placing the interests of any third-party ahead of the interests of PLAINTIFFS, or any of them.

92. ARMENTROUT, and each of them, acted in their own self-interest by failing to follow the required ethics, both in advising PLAINTIFFS, and each of them, and in representing PLAINTIFFS, and each of them, with third-parties.

93. As a result of ARMENTROUT'S breach and breaches of fiduciary duties, PLAINTIFFS, and each of them, suffered economic losses and damages.

94. As a direct result of ARMENTROUT'S breach and breaches of fiduciary duty, PLAINTIFFS, and each of them, suffered foreseeable immediate and consequential damages in such amounts as are fair and reasonable, plus costs and such further relief as the court deems just and proper.

95. WHEREFORE, PLAINTIFFS, and each of them, demand judgment against ARMENTROUT for money damages in such amounts as are fair and reasonable for breach of fiduciary duties, plus costs and such further relief as the court deems just and proper.

1           96.       ARMENTROUT'S actions, and each of them, were wanton, willful, and  
2 intentional, justifying an award of punitive damages to deter others from similar conduct in the  
3 future.  
4

5                               **FOURTH CAUSE OF ACTION**

6                               **BREACH OF FIDUCIARY DUTY**  
7                               **(Allegations specific to GALLATIN)**

8           97.       PLAINTIFFS incorporate by this reference all prior the above paragraphs  
9 numbered 1 through 96 inclusive, as though fully set forth herein.

10          98.       PLAINTIFFS gave GALLATIN a Power of Attorney to negotiate on their behalf  
11 and in their best interest with ROIC.

12          99.       By the Power of Attorney, GALLATIN owed to PLAINTIFFS duties of loyalty and  
13 were prohibited from placing the interests of GALLATIN ahead of the interests of PLAINTIFFS,  
14 or any of them.

15          100.      By the Power of Attorney, GALLATIN owed to PLAINTIFFS a duty of loyalty  
16 and was prohibited from placing the interests of any third-party ahead of the interests of  
17 PLAINTIFFS, or any of them.  
18

19          101.      GALLATIN acted in his own self-interest by failing to negotiate on PLAINTIFFS'  
20 behalf and in their best interest with ROIC, by negotiating instead a plan for his takeover of the  
21 lease agreement with ROIC for the RESTAURANT property.  
22

23          102.      As a result of GALLATIN'S breach and breaches of fiduciary duties,  
24 PLAINTIFFS, and each of them, suffered economic losses and damages.  
25

26          103.      As a direct result of GALLATIN'S breach and breaches of fiduciary duty  
27 PLAINTIFFS, and each of them, suffered foreseeable immediate and consequential damages  
28 in such amounts as are fair and reasonable, plus costs and such further relief as the court deems

1 just and proper.

2 104. WHEREFORE, PLAINTIFFS, and each of them, demand judgment against  
3 GALLATIN for money damages in such amounts as are fair and reasonable for breach of  
4 fiduciary duties, plus costs and such further relief as the court deems just and proper.  
5

6 105. GALLATIN'S actions, and each of them, were wanton, willful, and intentional,  
7 justifying an award of punitive damages to deter others from similar conduct in the future.

8 **(Causes of Action against ALL DEFENDANTS)**

9 **FIFTH CAUSE OF ACTION**

10 **COVENANT OF GOOD FAITH AND FAIR DEALING**

11  
12 106. PLAINTIFFS incorporate by this reference all prior the above paragraphs  
13 numbered 1 through 105 inclusive, as though fully set forth herein.

14 107. In every contract there is implied by law a covenant of good faith and fair dealing,  
15 by which each party to a contract is beholden to take such further acts as are necessary to be taken  
16 in good faith to carry out the intent of the parties.  
17

18 108. Implied into the contracts between PLAINTIFFS and the DEFENDANTS is the  
19 implied promise that the LAW DEFENDANTS would act in good faith and fair dealing with  
20 PLAINTIFFS. The covenant imposes on the DEFENDANTS the duty to refrain from doing  
21 anything which by any act of his own would render performance of the contract impossible.  
22

23 109. ARMENTROUT has breached the covenant of good faith and fair dealing by,  
24 among other things:

25 a. failing to act according to the ethical norms required by the Nevada State  
26 Bar, including but not limited to failing in the duty of loyalty,

27 b. failing in the duty to act with professional competence, exclusive of skill  
28 and knowledge,



- c. failing to act with the requisite required skill and knowledge,
- d. failing to act with the required fiduciary standards, and
- e. such other failings as may be shown by discovery conducted in this action.

110. GALLATIN has breached the covenant of good faith and fair dealing by among other things:

- a. unjustifiably failing to perform, and has thereby breached the contract, and
- b. breaching the agreement to loan PLAINTIFFS under the NOTE AND SECURITY AGREEMENT, dated July 9, 2012.

111. PLAINTIFFS, and each of them, demand judgment against DEFENDANTS for money damages in such amounts as are fair and reasonable for breach of the covenant of good faith and fair dealing, plus costs and such further relief as the court deems just and proper.

### **SIXTH CAUSE OF ACTION**

#### **CIVIL CONSPIRACY**

112. Paragraphs 1 to 111 inclusive are incorporated as though fully set forth herein.

113. To state an actionable claim for civil conspiracy to defraud, a plaintiff must allege: (1) a conspiracy agreement formed by the defendants to unlawfully harm the plaintiff, (2) an act of fraud in furtherance thereof, and (3) resulting damages to the plaintiff.

114. A conspiracy may be “inferred from the nature of the acts done, the relation of the parties, the interests of the alleged conspirators, and other circumstances.

115. The DEFENDANTS, and each of them, agreed and conspired that it would be in each of their economic interests if the ownership of the GRILL was severed from the PLAINTIFFS, and each of them, and transferred to Defendants GALLATIN.

116. To that end, among other acts:



- b. In furtherance of their conspiracy to defraud PLAINTIFFS of property and other damages,
- c. By utilizing an enterprise, the CONSPIRACY,
- d. To wrongfully deprive the PLAINTIFFS, and each of them,
  - i. of the BUSINESS and/or the GRILL, and
  - ii. its future profits,
- e. In breach of the fiduciary duties of:
  - i. Defendant ARMENTROUT, and
  - ii. Defendant T. GALLATIN,
- f. By the provision of fraudulent legal advice by ARMENTROUT,
- g. And by other acts in violation of their duties of loyalty and professional and ethical conduct to PLAINTIFFS,
- h. As well as by as other criminal acts by DEFENDANTS, and each of them,
- i. By utilizing extortion, menace, duress, and/or coercion and other crimes by GALLATIN.

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## RACKETEERING ACTIVITY (NEVADA RICO)

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-19-

1           124.     DEFENDANTS, and each of them, have profited through Racketeering Activity  
2 through an enterprise whereby the DEFENDANTS:

- 3                   a.       Utilized such scheme and/or enterprise to defraud PLAINTIFFS, by use of  
4                   i.       interstate mail, and/or  
5                   ii.       interstate wire,  
6                   b.       In furtherance of their conspiracy to defraud PLAINTIFFS of property and  
7 other damages,  
8                   c.       By utilizing an enterprise, the CONSPIRACY,  
9                   d.       To wrongfully deprive the PLAINTIFFS, and each of them, of the  
10 BUSINESS and/or the GRILL and its future profits,  
11                   e.       In breach of the fiduciary duties of:  
12                   i.       Defendant ARMENTROUT, and  
13                   ii.       Defendant GALLATIN,  
14                   iii.       and each of them,  
15                   f.       By the provision of fraudulent legal advice by ARMENTROUT, and  
16                   g.       By other acts in violation of their duties of loyalty and professional and  
17 ethical conduct to PLANTIFFS,  
18                   h.       As well as by as other criminal acts by DEFENDANTS, and each of them  
19                   i.       By utilizing extortion, menace, duress, and/or coercion and other  
20 crimes by DEFENDANTS.

21           125.     By their actions, DEFENDANTS, and each of them, have harmed PLAINTIFFS,  
22 and each of them, in amounts to be proven at time of trial, which sums are in excess of the  
23 jurisdictional amount of this Court, and which includes compensatory damages, punitive damages,  
24 attorneys' fees, and such further relief as the court deems just and proper.

#### 25                   **NINTH CAUSE OF ACTION**

#### 26                   **INTENTIONAL MISREPRESENTATION**

27           126.     Paragraphs 1 to 125 inclusive are incorporated as though fully set forth herein.

28           127.     DEFENDANTS made false representations that harmed PLAINTIFFS as follows:

1 a. DEFENDANTS represented to PLAINTIFFS that a GALLATIN would  
2 negotiate with ROIC on PLAINTIFFS' behalf and in PLAINTIFFS' best interest;

3 b. DEFENDANTS' representation was false because GALLATIN intended to  
4 take over the RESTAURANT with the legal assistance of ARMENTROUT.

5 128. DEFENDANTS knew that the representation was false when they made it, or  
6 DEFENDANTS made the representation recklessly and without regard for its truth.

7 129. DEFENDANTS intended that PLAINTIFFS would rely on the representation.

8 130. PLAINTIFFS reasonably relied on DEFENDANTS' representation.

9 131. PLAINTIFFS were harmed by the loss of the RESAURANT, its assets, value, and  
10 revenue.  
11

12 132. PLAINTIFFS reliance on DEFENDANTS' representation was a substantial factor  
13 in causing PLAINTIFFS' harm.

14 133. By their actions, DEFENDANTS, and each of them, have harmed PLAINTIFFS,  
15 and each of them, in amounts to be proven at time of trial, which sums are in excess of the  
16 jurisdictional amount of this Court, and which includes compensatory damages, punitive damages,  
17 attorneys' fees, and such further relief as the court deems just and proper.  
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19 **TENTH CAUSE OF ACTION**

20 **NEGLIGENT MISREPRESENTATION**

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22 134. Paragraphs 1 to 133 inclusive are incorporated as though fully set forth herein.

23 135. DEFENDANTS negligently misrepresented facts that harmed PLAINTIFFS as  
24 follows:

25 a. DEFENDANTS represented to PLAINTIFFS that a GALLATIN would  
26 negotiate with ROIC on PLAINTIFFS' behalf and in PLAINTIFFS' best interest;

27 b. DEFENDANTS' representation was false because GALLATIN intended to  
28 take over the RESTAURANT with the legal assistance of ARMENTROUT.

1           136.     DEFENDANTS represented to PLAINTIFFS that these facts were true, although  
2 the representation was not true.

3           137.     Although DEFENDANTS may have honestly believed that the representations  
4 were true, DEFENDANTS had no reasonable grounds for believing the representation was true.  
5

6           138.     DEFENDANTS intended that PLAINTIFFS would rely on the representation.

7           139.     PLAINTIFFS reasonably relied on DEFENDANTS' representation.

8           140.     PLAINTIFFS were harmed by the loss of the RESAURANT, its assets, value, and  
9 revenue.  
10

11           141.     PLAINTIFFS reliance on DEFENDANTS' representation was a substantial factor  
12 in causing PLAINTIFFS' harm.

13           142.     By their actions, DEFENDANTS, and each of them, have harmed PLAINTIFFS,  
14 and each of them, in amounts to be proven at time of trial, which sums are in excess of the  
15 jurisdictional amount of this Court, and which includes compensatory damages, punitive damages,  
16 and attorneys' fees and such further relief as the court deems just and proper.  
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18                   **ELEVENTH CAUSE OF ACTION**

19           **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

20           143.     Paragraphs 1 to 142 inclusive are incorporated as though fully set forth herein.  
21

22           144.     PLAINTIFFS had an existing business relationship with GALLATIN with the  
23 probability of future economic benefit.

24           145.     The DEFENDANTS, and each of them, have engaged in a course of action that has  
25 been injurious to such relationship including (despite an attorney-client relationship between  
26 PLAINTIFFS and ARMENTROUT, and a fiduciary relationship between PLAINTIFFS and  
27 GALLATIN) by conspiring with each other Defendant:  
28

- a. On how to exclude PLAINTIFFS from the RESTAURANT;
- b. On how to divert assets of the RESTAURANT away from PLAINTIFFS;
- c. On how to remove PLAINTIFFS from the premises of the RESTAURANT;
- d. On how to negotiate against PLAINTIFFS, all including by obtaining confidential attorney-client information of PLAINTIFFS in order to discuss it among the DEFENDANTS;
- e. By utilizing extortion, menace, duress, and/or coercion to force PLAINTIFFS to execute the OFFER TO PURCHASE;
- f. By preventing PLAINTIFFS from entering into other, more lucrative potential leases at other locations;
- g. By engaging in slander against PLAINTIFFS, and each of them;
- h. By engaging in slander per se against PLAINTIFFS, and each of them;
- i. By engaging in libel against PLAINTIFFS, and each of them; and
- j. By creating disharmony between PLAINTIFFS and DEFENDANTS, and each of them.

146. DEFENDANTS' actions, and the actions of each of them, have interfered with such relationship between PLAINTIFFS and the Business and each of the DEFENDANTS.

147. By their actions, DEFENDANTS, and each of them, have harmed PLAINTIFFS, and each of them, in amounts to be proven at time of trial, which sums are in excess of the jurisdictional amount of this Court, and which includes compensatory damages and such further relief as the court deems just and proper.

#### **TWELFTH CAUSE OF ACTION**

##### **NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

148. Paragraphs 1 to 147 inclusive are incorporated as though fully set forth herein.

149. PLAINTIFFS had an existing business relationship with GALLATIN with the probability of future economic benefit.

1           150.     The DEFENDANTS, and each of them, have negligently engaged in a course of  
2 action that has been injurious to such relationship including (despite an attorney-client relationship  
3 between PLAINTIFFS and ARMENTROUT, and a fiduciary relationship between PLAINTIFFS  
4 and GALLATIN) by conspiring with each other Defendant:

- 6                   a.       On how to exclude PLAINTIFFS from the RESTAURANT;
- 7                   b.       On how to divert assets of the RESTAURANT away from PLAINTIFFS;
- 8                   c.       On how to remove PLAINTIFFS from the premises of the RESTAURANT;
- 9                   d.       On how to negotiate against PLAINTIFFS, all including by obtaining  
10 confidential attorney-client information of PLAINTIFFS in order to discuss it among the  
11 DEFENDANTS;
- 12                  e.       By utilizing extortion, menace, duress, and/or coercion to force  
13 PLAINTIFFS to execute the OFFER TO PURCHASE;
- 14                  f.       By preventing PLAINTIFFS from entering into other, more lucrative  
15 potential leases at other locations;
- 16                  g.       By engaging in slander against PLAINTIFFS, and each of them;
- 17                  h.       By engaging in slander per se against PLAINTIFFS, and each of them;
- 18                  i.       By engaging in libel against PLAINTIFFS, and each of them; and
- 19                  j.       By creating disharmony between PLAINTIFFS and DEFENDANTS, and  
20 each of them.

21           151.     DEFENDANTS' actions, and the actions of each of them, negligently have  
22 interfered with such relationship between PLAINTIFFS and the Business and each of the  
23 DEFENDANTS.

24           152.     By their actions, DEFENDANTS, and each of them, negligently have harmed  
25 PLAINTIFFS, and each of them, in amounts to be proven at time of trial, which sums are in  
26 excess of the jurisdictional amount of this Court, and which includes compensatory damages and  
27 such further relief as the court deems just and proper.  
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